

**INVESTIGATIVE REPORT
PA11-0001**

CHARGING PARTY: Misty Leonard

RESPONDING PARTY: Friendly's Restaurant & Friendly Ice Cream Corporation

CHARGE: public accommodations/breastfeeding

SUMMARY OF CHARGE: On August 5, 2010 Misty Leonard filed a charge of discrimination alleging that the Friendly's Restaurant in Berlin, Vermont discriminated against her by denying her the opportunity to breastfeed her son in a place of public accommodation. Specifically, on July 11, 2010, Ms. Leonard and her family visited the Friendly's Restaurant in Berlin. During their visit, while Ms. Leonard was breastfeeding her son at their table, the waitress told Ms. Leonard that she could not breastfeed her son in the restaurant.

SUMMARY OF RESPONSE: The Friendly's Restaurant and Friendly Ice Cream Corporation did not fill a formal response to the charge.

PRELIMINARY RECOMMENDATION: This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that the Friendly's Restaurant of Berlin, Vermont and the Friendly Ice Cream Corporation discriminated against Misty Leonard by denying her the opportunity to breastfeed her son in a place of public accommodation, a violation of 9 V.S.A. §4502(j) of the Vermont Fair Housing and Public Accommodation Act.

SUMMARY OF INVESTIGATION:

Interviews:

Dave Hinckley, 11/19/10

Tyler Lebeau, 11/12/10

Misty Leonard, 11/3/10

Gloria Lord, 11/5/10
Dawn Merchant, 12/15/10
Nael Salha, 11/19/10

Documents:

Charge of Discrimination, 8/5/10

Elements of prima facie case:

1. The charging party is a member of a protected class (breastfeeding mother)
2. She made herself available to receive services ordinarily provided by the respondents to all members of the public in the manner in which they are ordinarily provided; and
3. She was denied the opportunity to breastfeed her child in a place of public accommodation.

I. Facts

A. Background

1. **Misty Leonard** is the mother of two young children, Adriana and Ashton. At the time of the incident in July 2010, her son Ashton was 4 months old and still breastfeeding. **Tyler Lebeau** is Ms. Leonard's brother. **Jim Lebeau** is Ms. Leonard's father.¹ **Dawn Merchant** is Jim Lebeau's girlfriend. **Gloria Lord** is Ms. Leonard's mother-in-law. Jim Lebeau and Ms. Merchant live in Massachusetts.

2. **Nael Salha** is the general manager of the Friendly's Restaurant in Berlin, Vermont. **Dave Hinckley** is the district manager who oversees the Berlin restaurant. **Casey Loux** was the waitress who served Ms. Leonard and her family on July 11, 2010. Ms. Loux no longer works for the Friendly's Restaurant and was not interviewed for this investigation.

¹ Ms. Leonard's father was not available for an interview for this investigation.

B. The allegations

3. On July 11, 2010, Ms. Leonard visited the Friendly's Restaurant in Berlin, Vermont with her two children, Tyler Lebeau, Jim Lebeau, and Dawn Merchant. They were seated in a booth at the back of the restaurant.

4. **Ms. Leonard, Mr. Tyler Lebeau, and Ms. Merchant:** After Ms. Leonard and her family arrived at the restaurant and sat down, the waitress came over and took their orders for drinks. Ashton became hungry and Ms. Leonard started to breastfeed him before the waitress returned to take their food orders. Ms. Leonard was wearing a tank top and a button up shirt over the tank top. She unbuttoned the shirt and unhooked her nursing bra and started to feed Ashton with her shirt over Ashton's head. Ms. Merchant was sitting between Ms. Leonard and other people in the restaurant. Ashton's head was below the level of the table. The only way someone could see what Ms. Leonard was doing was if someone stood over her.

5. When the waitress came back she stood at the opposite end of the table. She saw Ms. Leonard and then came over to where Ms. Leonard was seated and stood over her. The waitress asked if Ms. Leonard had a blanket to cover herself up. Ms. Leonard said "no" and the waitress then said that if Ms. Leonard did not have a blanket to cover herself up, she would have to stop breastfeeding. Ms. Leonard asked, "Are you serious?" The waitress said Ms. Leonard would have to stop because there were children in the restaurant and that she (Ms. Leonard) needed to be respectful to the other

customers.² Ms. Leonard then said she would stop feeding Ashton. Ms. Leonard's father then got up and walked around with Ashton who would not stop crying because he was hungry. Mr. Lebeau did not get to eat his meal. Ms. Leonard's father told her to not make a big issue out of the situation. Ms. Leonard did not speak with the waitress again and no one else said anything to the waitress.

6. **Ms. Lord:** The next day, after hearing what happened to Ms. Leonard and her family the day before, Ms. Lord returned to the restaurant and asked to speak with the manager. Ms. Lord told the manager, Mr. Salha, that Ms. Leonard had come in the day before and breastfed her baby at the table and that the waitress then told Ms. Leonard that she would have to leave if she was going to feed the baby. Mr. Salha said the waitress would not have asked Ms. Leonard to leave if she was feeding the baby. Ms. Lord said, "Yes, the waitress said that." The waitress was there when Ms. Lord was speaking with the manager and said that she told Ms. Leonard that she (Ms. Leonard) had to go some place else to feed her baby but not that she had to leave the restaurant. Ms. Lord said "No, you told Misty that she couldn't feed the baby, that it was a family restaurant and that Misty would have to leave." Another female staff person at the restaurant then took the waitress into the kitchen. Ms. Lord told the manager that Ms. Leonard's

² Ms. Merchant said that the waitress also told Ms. Leonard that she would have to leave the restaurant if she did not stop breastfeeding Ashton.

family had been there visiting from out of town and said again that Ms. Leonard was told she would have to leave and could not breastfeed her baby. Ms. Lord then said, "I'm not happy and now I have to pay for a lawyer because you told my daughter she has to leave because it's a family restaurant." The manager said, "We can resolve this another way." Ms. Lord said, "What other way? You told her she had to leave." Ms. Lord then left and did not give the manager a chance to respond further.

7. **Mr. Hinckley and Mr. Salha:** Both Mr. Hinckley and Mr. Salha were in the restaurant when Ms. Lord came in the day after the incident. Neither man had any knowledge of the incident prior to Ms. Lord's visit. Ms. Lord told them that Ms. Leonard had been in the restaurant the previous day and that she had not been allowed to breastfeed her son. Both Mr. Hinckley and Mr. Salha apologized to Ms. Lord and offered to have Ms. Leonard come back with her family for a free meal. Ms. Lord did not respond to this offer. They both told Ms. Lord that breastfeeding was allowed in the restaurant and that the incident should not have happened. Ms. Lord was very upset and said she was going to sue the restaurant and then left.

8. Both Mr. Hinckley and Mr. Salha told this investigation that they know that the law allows for breastfeeding in places of public accommodation. They said this was an issue of uninformed staff. They conducted training with all their staff on this issue starting the next day. The waitress involved in the incident quit the next day, not because of this

incident, but because she moved out of the area. While the waitress did not attend the training, Mr. Hinckley and Mr. Salha informed the waitress about the law. The waitress told Mr. Hinckley and Mr. Salha that she just asked Ms. Leonard to cover up and that she did not tell Ms. Leonard that she could not breastfeed her son.

II. Analysis

The Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4502(j) provide:

(j) Notwithstanding any other provision of law, a mother may breastfeed her child in any place of public accommodation in which the mother and child would otherwise have a legal right to be.

Ms. Leonard alleges that Friendly's Restaurant in Berlin, Vermont and the Friendly Ice Cream Corporation discriminated against her by denying her the opportunity to breastfeed her son in a place of public accommodation. Specifically, on July 11, 2010, Ms. Leonard and her family visited the Friendly's Restaurant in Berlin. During their visit, while Ms. Leonard was breastfeeding her son at their table, the waitress told Ms. Leonard that she could not breastfeed her son in the restaurant. In order to sustain her burden of proof under 9 V.S.A. §4502(j), Ms. Leonard must show by a preponderance of the evidence that:

1. She is a member of a protected class (breastfeeding mother)
2. She made herself available to receive services ordinarily provided by the respondents to all members of the public in the manner in which they are ordinarily provided; and
3. She was denied the opportunity to breastfeed her child in a place of public accommodation.

At the time of the incident, Ms. Leonard was a breastfeeding mother; her son Ashton was 4 months old (first element). She arrived with her family to have a meal and all were seated at the Friendly's Restaurant in Berlin (second element). According to Ms. Leonard, Mr. Tyler Lebeau, and Ms. Merchant, the waitress told Ms. Leonard that she could not breastfeed Ashton in the restaurant (third element). In addition, all three reported that Ms. Leonard was covered up while she breastfed Ashton.³ In contrast, the waitress reported to Mr. Hinckley and Mr. Salha that she only asked Ms. Leonard to cover up and that she did not say that Ms. Leonard could not breastfeed her son. Aside from Mr. James Lebeau, who was not available for an interview for this investigation, there were no other witnesses to the interaction. It appears that with a preponderance of evidence, Ms. Leonard has established a prima facie case of discrimination and her claim must prevail.

PRELIMINARY RECOMMENDATION: This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that the Friendly's Restaurant of

³ Please note the 9 V.S.A. §4502(j) does not require a breastfeeding mother to cover her breast or her child while breastfeeding in a place of public accommodation.

Berlin, Vermont and the Friendly Ice Cream Corporation discriminated against Misty Leonard by denying her the opportunity to breastfeed her son in a place of public accommodation, a violation of 9 V.S.A. §4502(j) of the Vermont Fair Housing and Public Accommodation Act.

Tracey Tsugawa, Investigator

Robert Appel, Executive Director

Date

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Misty Leonard,)	
Charging Party)	
)	
v.)	CHARGE NO. PA11-0001
)	
Friendly's Restaurant, Berlin, VT,)	
Friendly's Ice Cream Corporation,)	
Respondents)	

POST-DETERMINATION CONCILIATION AGREEMENT

Misty Leonard (hereinafter "the complainant") filed a charge of discrimination pursuant to 9 V.S.A. §§4500 et seq., Vermont's Fair Housing and Public Accommodations Act ("VFHPAA"), alleging public accommodations discrimination by the Friendly's Restaurant, Berlin, VT and Friendly's Ice Cream Corporation (hereinafter "respondents"). The charge, PA11-0001, filed by the complainant alleged that the respondents violated her statutory right to breastfeed in a place of public accommodation. Specifically, the complainant alleged that on August 5, 2010 while dining with her family at the Berlin Friendly's she began to breastfeed her infant. Shortly thereafter, she was instructed by a server employed by the restaurant to "cover up." Rather than complying with this directive, the complainant and her family hurriedly finished their meals and left the restaurant. They were distraught after this incident.

Respondents contend that this was an isolated incident. It is Friendly's policy to allow guests with nursing babies to breastfeed without restriction or embarrassment. When complainant's relative returned at a later date to the store to complain, the managers apologized. Friendly's has also distributed a memorandum to all Vermont

employees reminding them of Friendly's policy in favor of nursing mothers and Vermont's breastfeeding statute.

On February 2, 2011, the Human Rights Commission issued a final determination that there are reasonable grounds to believe that the complainant was the victim of unlawful discrimination by the respondents in their provision goods and services offered by a place of public accommodations based on her being a breastfeeding mother whose right to breastfeed in a place of public accommodation is guaranteed by 9 V.S.A. §4502(j) of the VFHPAA.

Terms

1. The respondents affirm their obligation to comply in full with the provisions of 9 V.S.A., §4502, which prohibit discrimination in places of public accommodation.
2. The respondents agree to provide information and training to each of its employees or franchisees in the State of Vermont regarding the provisions of by 9 V.S.A. §4502(j) of the VFHPAA which prohibits discrimination against a mother breastfeeding in any place of public accommodation "in which the other and child would otherwise have a legal right to be." The respondents have provided each of their Vermont employees with an informational brochure prepared by the Human Rights Commission describing Vermont's breastfeeding in public accommodations law by placing the brochure in their pay envelope.
3. The respondents agree that they shall take no action nor in any way retaliate against Ms. Leonard or any member of her family for her having filed the Charge, or against any person for assisting her with the filing of this charge or the investigation of her complaint.

4. The provisions of this Post-Determination Conciliation Agreement adequately vindicate the public interest and are a public document. The Vermont Human Rights Commission shall conduct a compliance review within five (5) months from the date of this Agreement.

5. This Agreement may be executed in counterparts, which together shall constitute one agreement. This Agreement is fully enforceable with signatures provided by facsimile transmission.

Dated at Montpelier, Vermont this 17 day of June, 2011.

By: Misty Leonard
Misty Leonard

Dated at Berlin, Vermont this 23 day of June, 2011.

FRIENDLY'S RESTAURANT, BERLIN, VT

By:

Deanne J. Sh
Its Authorized Agent

FRIENDLY'S ICE CREAM CORPORATION

Dated at Wilbraham, Massachusetts this 23 day of June, 2011.

By: Robert K. Sanyal
Its Authorized Agent

VERMONT HUMAN RIGHTS COMMISSION

This Post-Determination Conciliation Agreement is hereby approved and no further action will be taken by the Human Rights Commission regarding the charge of public accommodation race and color discrimination, HRC Charges No. PA11-0001, other than any action necessary to enforce the terms of this agreement.

Dated at WINDSOR, Vermont, this 16 th day of JUNE, 2011.

By: Mary C. Marzec Gerrion
Mary Marzec Gerrion, Chair

Nathan Besio
Nathan Besio, Commissioner

Mary Brodsky
Mary Brodsky, Commissioner

Mercedes Mack
Mercedes Mack, Commissioner

Donald R. Vickers
Donald Vickers, Commissioner